

Office of Legal Services  
Curtis State Office Bldg.  
1000 SW Jackson Suite 560  
Topeka KS 66612-1368



Phone: 785-296-1291  
Fax: 785-296-7119

Robert Moser, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

October 3, 2011

Barbara Dominguez  
Office of the Secretary of State  
120 SW 10<sup>th</sup> St.  
Topeka KS 66612

RE: Filing Notice of Hearing for Proposed Administrative Regulations  
KAR 28-35-600 through 28-35-608

Dear Ms. Dominguez:

Attached are two copies of the above-referenced Kansas Department of Health and Environment proposed new permanent Article 35 regulations concerning radon measurement and radon mitigation. Two copies of the regulatory impact statement are also included.

Also attached are two copies of the notice of public hearing for these regulations. The public hearing is scheduled for December 21, 2011, at 1:00 p.m. in the Azure Conference Rm., Curtis State Office Bldg., Topeka. Please cause the notice of public hearing to be published in the *Kansas Register*.

If you have any questions or need any further information regarding filing of the notice of hearing for these regulations, please contact Susan Vogel at 296-1291 or [svogel@kdheks.gov](mailto:svogel@kdheks.gov).

Sincerely,

Robert Moser, MD  
Secretary of Health and Environment

#### Attachments

pc w/notice of hearing only  
Rep. Carl Holmes, Chair, Joint Committee on Rules and Regulations  
Sen. Vicki Schmidt, Vice Chair, Joint Committee on Rules and Regulations  
Rep. Janice Pauls, Ranking Minority Member, Joint Committee on Rules and Regulations  
Raney Gilliland, Legislative Research

**State of Kansas**  
**Department of Health and Environment**

**Notice of Hearing on Proposed Administrative Regulations**

The Kansas Department of Health and Environment (KDHE), Division of Health, Bureau of Environmental Health, will conduct a public hearing at 1 p.m., Wednesday, December 21, in the Azure Conference Room of the Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed new regulations K.A.R. 28-35-600, 28-35-601, 28-35-602, 28-35-603, 28-35-604, 28-35-605, 28-35-606, 28-35-607, 28-35-608, and 28-35-609 relating to radon measurement, mitigation, and laboratory analysis. A summary of the proposed regulations and the estimated economic impact follows:

**Summary of Regulations:**

**28-35-600.** Defines specific terms used throughout the regulations.

**28-35-601.** Specifies general requirements applicable to all persons for certification for radon measurement, mitigation or laboratory services; establishes grounds for denying a certification; sets the term of certification at 24 months; establishes procedures for seeking relief from the regulations.

**28-35-602.** Establishes the fees for initial and renewal certification as well as late fees and fees for returned checks or insufficient funds; certification fees are non-refundable.

**28-35-603, 28-35-604, 28-35-605.** Establish the requirements for initial certification and renewal and continuing education for radon measurement technicians and radon mitigation technicians.

**28-35-606, 28-35-607.** Establish the requirements for radon measurement businesses and radon mitigation businesses; require businesses to employ or retain either a certified radon

measurement technician or certified mitigation technician as a consultant; require that services businesses provide be directly supervised by a certified person.

**28-35-608.** Provides for the reciprocal recognition of another state or federal certification provided the department finds the certification requirements are at least as stringent as those of the Kansas Radon Certification Law.

**28-35-609.** Specifies the requirements for renewing 24-month certifications for radon measurement technicians, radon mitigation technicians, and radon measurement laboratories.

**Economic Impact:**

Cost to certified individuals: The application fees listed in K.A.R. 28-35-602 for radon measurement technicians, radon mitigation technicians, and radon measurement laboratories will result in a minor cost impact to these individuals at 24-month intervals.

Cost to the Agency: There is no estimated increase in costs to the agency.

Cost to other governmental agencies or units: There is no known additional cost.

The time period between publication of this notice and the scheduled hearing serves as the required public comment period of at least 60 days for the purpose of receiving written public comments on the proposed new regulations. At any time during the public comment period any interested parties may submit written comments to Kansas Department of Health and Environment, Bureau of Environmental Health, Kansas Radon Program, 1000 S.W. Jackson, Suite 330, Topeka, 66612-1365, by fax to (785) 296-0984, or by e-mail to [radon@kdheks.gov](mailto:radon@kdheks.gov). During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed new regulations as well as an opportunity to submit their written comments. In order to give each individual or entity an opportunity to present their views, it

may be necessary for the hearing officer to request that each presenter limit any oral presentation to an appropriate time frame.

Complete copies of the proposed regulations and the corresponding regulatory impact statement may be obtained on the Radiation Control Program Web site at <http://www.kdheks.gov/radiation/radpubnotice.html> or by contacting the Kansas Radon Program at the address above, (785) 296-1560 or fax (785) 296-0984.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and regulatory impact statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting the Kansas Radon Program at 785-296-1560.

Robert Moser, M.D.

Secretary of Health and Environment

28-35-600. Definitions. In addition to the terms defined in K.S.A. 48-16a02 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "All reasonable times" means normal business hours and other times that radon services are being performed, or at a time convenient for the property owner.

(b) "Mitigation" means any action taken to reduce radon concentrations in the indoor atmosphere or to prevent the entry of radon into the indoor atmosphere. This term shall include application of materials, installation of systems, and any new repair or alteration of a building or design.

(c) "Mitigation system" means any set of devices, controls, or materials installed for reducing radon concentrations in a building.

(d) "Quality assurance and quality control plan" means a plan or design that ensures the authenticity, integrity, reproducibility, and accuracy of radon concentration measurements. Each quality assurance and quality control plan shall include at a minimum procedures for the following:

- (1) Chain of custody;
- (2) calibration of measurement devices in the field;
- (3) checks for background;
- (4) duplicates, blanks, and spikes; and
- (5) representative sampling.

(e) "Radon certification law" means K.S.A. 48-16a01 through 48-16a12, and amendments thereto.

(f) "Radon measurement technician" means an individual certified by the department who performs radon or radon progeny measurements for a radon measurement business or

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

SEP 28 2011

JUL 29 2011

APPROVED BY

APPROVED

provides professional advice on radon or radon progeny measurements, health risks, radon-related exposure, radon entry routes, or other radon-related activities.

(g) "Radon mitigation technician" means an individual certified by the department who designs or installs radon mitigation systems or who performs and evaluates results of tests to determine appropriate radon mitigation systems. This individual may be employed or contracted by a radon mitigation business.

(h) "Radon progeny" means the short-lived radionuclides formed from the decay of radon-222 or radon-220.

(i) "Radon services" means any activity provided by a person that is subject to the radon certification law. This term shall include radon testing, the analysis of radon, radon testing or mitigation consultation, and radon mitigation.

(j) "Site" means a geographic location comprising leased or owned land, buildings, and other structures where radon services are performed. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03, 48-16a05, 48-16a06, and 48-16a08; effective P-\_\_\_\_\_.)

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY



DEPT. OF ADMINISTRATION

SEP 23 2011

APPROVED

28-35-601. General provisions. Except as otherwise specifically provided by the radon certification law, K.A.R. 28-35-601 through 28-35-609 shall apply to any person that provides radon services.

(a) Any initial, renewal, or reciprocal application to conduct radon services may be denied by the department for any of the following reasons:

- (1) Any false statement in the application;
- (2) revocation of a prior radon services certification in Kansas or another state; or
- (3) violation of any of the requirements of K.A.R. 28-35-601 through 28-35-609 or the radon certification law.

(b) Any certification to conduct radon services may be suspended or revoked or may have requirements or restrictions added by the secretary for any of the following reasons:

- (1) Any condition revealed by an application, any statement of fact, or any report, record, or inspection that could result in the denial of any application; or
- (2) violation of or failure to observe any of the terms and conditions of the certification, any requirement of the radon certification law and K.A.R. 28-35-601 through 28-35-609, or any order of the secretary.

(c) Initial certification and renewal certification shall be valid for 24 months.

(d) Requirements or restrictions that are necessary to ensure compliance with the radon certification law may be specified by the secretary at the time of initial certification or renewal certification or in connection with any radon services inspection.

(e) Failure to comply with all requirements for certification within 60 days of submittal of an application for initial or renewal certification shall void the application.

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY

ASR

DEPT. OF ADMINISTRATION

SEP 27 2011

APPROVED

(f) An exemption to any requirement of K.A.R. 28-35-601 through 28-35-609 may be granted by the secretary if both of the following conditions are met:

(1) A person certified to conduct radon services submits a written request, including justification for the exemption and any supporting data or documentation, to the secretary for review and consideration for approval.

(2) The secretary determines that the exemption is protective of public health, safety, and the environment.

(g) Each person certified under the radon certification law and these regulations shall submit the reports required by K.S.A. 48-16a10, and amendments thereto, and any additional relevant information requested by the department in a format specified by the department.

(h) All records required to be kept by each person certified under the radon certification law and these regulations shall be retained for at least three years.

(i) Each radon measurement technician, radon mitigation technician, radon measurement business, radon mitigation business, and radon measurement laboratory shall allow the department access at all reasonable times to that person's or that person's employer's facilities and files for inspection and examination of records of radon services to determine compliance with the radon certification law and K.A.R. 28-35-601 through 28-35-609.

(j) Upon request by the department, each person certified under K.A.R. 28-35-601 through 28-35-609 or the radon certification law shall submit a list of scheduled measurement or mitigation activities to the department within two business days of receipt of the request.

(Authorized by K.S.A. 2010 Supp. 48-16a03 and 48-16a04; implementing K.S.A. 2010 Supp 48-16a03 and 48-16a10; effective P-\_\_\_\_\_.)

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY  


DEPT. OF ADMINISTRATION

SEP 23 2011

APPROVED

28-35-602. Fees. (a) Application fees for 24-month certification:

(1) Radon measurement technician:

(A) Initial certification . . . . . \$100.00

(B) Renewal certification . . . . . \$100.00

(C) Reciprocal certification . . . . . \$100.00

(2) Radon mitigation technician:

(A) Initial certification . . . . . \$100.00

(B) Renewal certification . . . . . \$100.00

(C) Reciprocal certification . . . . . \$100.00

(3) Radon measurement laboratory:

(A) Initial certification . . . . . \$250.00

(B) Renewal certification . . . . . \$250.00

(C) Reciprocal certification . . . . . \$250.00

(b) Fee for returned check . . . . . \$ 50.00

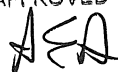
(c) Fee for late certification renewal, for each month or part of a month . . . . . \$ 25.00

Each fee specified in this regulation shall be nonrefundable. (Authorized by and implementing K.S.A. 2010 Supp. 48-16a03 and 48-16a04; effective P-\_\_\_\_\_.)

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY



DEPT. OF ADMINISTRATION

SEP 23 2011

APPROVED

28-35-603. Requirements for radon measurement technician. (a) Each applicant for initial certification as a radon measurement technician shall meet the requirements of K.S.A. 48-16a05, and amendments thereto, and the following additional requirements:

(1) Be at least 18 years of age;

(2) complete and show proof of completion to the department of a radon measurement training course with at least 16 hours of classroom instruction approved by the department pursuant to K.S.A. 48-16a05, and amendments thereto;

(3) pass an examination on radon measurement approved by the department pursuant to K.S.A. 48-16a05, and amendments thereto, with a score of at least 70 percent; and

(4) provide any additional relevant information requested by the department.

(b) Each radon measurement technician shall meet the following requirements:

(1) Conduct radon measurement activities in accordance with the requirements of the following:

(A) K.S.A. 48-16a05, and amendments thereto;

(B) "protocols for radon and radon decay product measurements in homes," EPA 402-R-92-003, including appendices, published by the environmental protection agency and dated June 1993, which is hereby adopted by reference;

(C) "indoor radon and radon decay product measurement device protocols," EPA 402-R-92-004, published by the environmental protection agency and dated July 1992, which is hereby adopted by reference; and

(D) all applicable municipal, county, state, and federal laws and regulations;

(2) upon request from the department, provide documentation of proficiency including continuing education requirements specified in K.A.R. 28-35-605;

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY  
*[Signature]*

DEPT. OF ADMINISTRATION

AUG 02 2011

APPROVED

(3) notify the department of any name or address changes within 30 days; and

(4) maintain and adhere to a quality assurance and quality control plan. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03 and 48-16a05; effective P-\_\_\_\_\_.)

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY



DEPT. OF ADMINISTRATION

AUG 02 2011

APPROVED

28-35-604. Requirements for radon mitigation technician. (a) Each applicant for initial certification as a radon mitigation technician shall meet the requirements of K.S.A. 48-16a06, and amendments thereto, and the following additional requirements:

(1) Be at least 18 years of age;

(2) complete and submit proof of completion to the department of a radon mitigation training course with at least 24 hours of classroom instruction that includes active participation in radon mitigation techniques approved by the department pursuant to K.S.A. 48-16a06, and amendments thereto;

(3) pass an examination on radon mitigation approved by the department pursuant to K.S.A. 48-16a06, and amendments thereto, with a score of at least 70 percent; and

(4) provide any additional relevant information requested by the department.

(b) Each radon mitigation technician shall meet the following requirements:

(1) Conduct radon mitigation activities in accordance with the requirements of the following:

(A) K.S.A. 48-16a06, and amendments thereto;

(B) "protocols for radon and radon decay product measurements in homes," which is adopted by reference in K.A.R. 28-35-603;

(C) "indoor radon and radon decay product measurement device protocols," which is adopted by reference in K.A.R. 28-35-603;

(D) "radon mitigation standards," EPA 402-R-93-078, including the appendix, published by the environmental protection agency, dated October 1993, and revised April 1994, which is adopted by reference; and

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY



DEPT. OF ADMINISTRATION

AUG 02 2011

APPROVED

(E) municipal, county, state, and federal laws and regulations;

(2) upon request from the department, provide documentation of proficiency including continuing education requirements specified in K.A.R. 28-35-605; and

(3) notify the department of any name or address changes within 30 days. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03 and 48-16a06; effective P-\_\_\_\_\_.)

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY



DEPT. OF ADMINISTRATION

SEP 23 2011

APPROVED

28-35-605. Continuing education. (a) Before certification renewal, each radon measurement technician shall meet the following continuing education requirements:

(1) Complete and submit proof of completion to the department of at least 16 hours of department-approved continuing education; and

(2) maintain documentation, pursuant to K.A.R. 28-35-601(h), that the continuing education was successfully completed within the prior 24-month certification period.

(b) Before certification renewal, each radon mitigation technician shall meet the following continuing education requirements:

(1) Complete and submit proof of completion to the department of at least 24 hours of department-approved continuing education;

(2) maintain documentation, pursuant to K.A.R. 28-35-601(h), that the continuing education was successfully completed within the prior 24-month certification period.

(c) If a person is certified as both a radon measurement technician and a radon mitigation technician, continuing education credit shall be granted for both certifications if the person completes at least 24 hours of department-approved continuing education credits for radon services during the 24-month period that the certificates are valid.

(d) Continuing education credit shall be accepted only for the completion of each different continuing education training course during a current certification period. Training courses for continuing education credit that are repeated shall be accepted only for the initial successful completion of the course during a current certification period. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03, 48-16a05, and 48-16a06; effective P-\_\_\_\_\_.)

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY



DEPT. OF ADMINISTRATION

SEP 23 2011

APPROVED

28-35-606. Radon measurement business. (a) Each radon measurement business shall maintain for inspection a list of the name and credentials of each radon measurement technician employed or retained as a consultant by the radon measurement business.

(b) A radon measurement technician shall be present on-site to directly supervise all measurement activities performed by each radon measurement business.

(c) A radon measurement technician shall perform all testing and consultation about radon or radon progeny measurements, health risks, radon-related exposure, radon entry routes, and other radon-related activities for each radon measurement business. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03 and 48-16a07; effective P-\_\_\_\_\_.)

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY

*JSP*

DEPT. OF ADMINISTRATION

JUL 29 2011

APPROVED

28-35-607. Radon mitigation business. (a) Each radon mitigation business shall maintain for inspection a list of the name and credentials of each radon mitigation technician employed or retained as a consultant by the radon mitigation business.

(b) All radon mitigation activities and consultations about radon or radon progeny measurements, health risks, radon-related exposure, radon entry routes, or other radon-related activities for a radon mitigation business shall be directly supervised or performed on-site by a radon mitigation technician.

(c) Each person subject to K.A.R. 28-35-601 through 28-35-609, when performing radon mitigation, shall comply with the protocols in the document adopted by reference in K.A.R. 28-35-604(b)(1)(D) regarding the design and construction of mitigation systems. (Authorized by K.S.A. 2010 Supp. 48-16a03; implementing K.S.A. 2010 Supp. 48-16a03 and 48-16a08; effective P-\_\_\_\_\_.)

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY



DEPT. OF ADMINISTRATION

SEP 23 2011

APPROVED

28-35-608. Reciprocity. (a) Reciprocal certification for a person providing radon services may be granted to an applicant that holds a valid certification from another state if the secretary determines that the other state program is equivalent to or more stringent than the radon certification law.

(b) Each applicant for reciprocal certification as a radon measurement technician or a radon mitigation technician shall submit a completed application to the department on a form provided by the department and shall provide any additional relevant information requested by the department.

(c) Each applicant for reciprocal certification shall submit payment to the department for the applicable fee specified in K.A.R. 28-35-602. (Authorized by and implementing K.S.A. 2010 Supp. 48-16a03; effective P-\_\_\_\_\_.)

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY



DEPT. OF ADMINISTRATION

SEP 23 2011

APPROVED

28-35-609. Renewal of certification. (a) Each certification renewal application for a radon measurement technician, radon mitigation technician, or radon measurement laboratory shall be submitted at least 60 days before expiration of the certificate.

(b) Each applicant for renewal of certification shall meet the following requirements:

(1) Submit a completed application to the department on a form provided by the department;

(2) provide any additional relevant information requested by the department documenting that all applicable continuing education requirements for certification renewal have been completed; and

(3) submit payment to the department for the applicable fee specified in K.A.R. 28-35-602.

(c) An applicant's failure to renew a certification within six months after certification has expired shall require that applicant's compliance with all requirements for initial certification.

(d) Each renewal application submitted after certification has expired shall require the payment of a late fee specified in K.A.R. 28-35-602. (Authorized by and implementing K.S.A. 2010 Supp. 48-16a03; effective P-\_\_\_\_\_.)

ATTORNEY GENERAL

SEP 28 2011

APPROVED BY



DEPT. OF ADMINISTRATION

JUL 29 2011

APPROVED

Kansas Department of Health and Environment  
Bureau of Environmental Health

**RADON CERTIFICATION  
REGULATORY IMPACT STATEMENT**

Pursuant to K.S.A 2010 Supp. 77-416

**PROPOSED NEW REGULATIONS**  
K.A.R. 28-35-600 through 28-35-609

October 3, 2011

## **Background of Proposed Regulations**

More than 1,800 new cases of lung cancer are diagnosed every year in Kansas (Kansas Cancer Registry 2006 data). The American Lung Association estimates that approximately 12% of new lung cancer cases, or over 200 new cases each year in Kansas, can be attributed to indoor radon gas exposure. Kansas Radon Program data shows over 41% of the 50,182 radon measurements conducted in Kansas had levels of radon gas exceeding the EPA established action level guideline of four picocuries/liter. As of 2010, the average observed residential radon level in Kansas was 4.8 pCi/L and the maximum reported radon level was 260 pCi/L. Fifty percent of homes in some Johnson County communities have indoor radon levels greater than four pCi/L (Kansas Radon Program data).

Prior to the adoption of the Kansas Radon Certification Law, technicians in Kansas who perform radon measurement and mitigation services were not required to obtain any training and certification, or to demonstrate any qualification for performing these services. They were also not required to share their radon testing and mitigation data with the Kansas Radon Program. It is critical that radon technicians in Kansas receive training and certification because radon gas is a known human Class A carcinogen. It is colorless, odorless, tasteless, and otherwise undetectable except with specialized equipment or test kits. Because of this, it is a risk about which people may be unaware. Without a radon test, Kansas residents have no other way of knowing if they may be living in a home where they are breathing dangerous radon levels. For a test to be accurate, a radon measurement technician must follow established testing standards and protocols. If a radon mitigation technician installs a mitigation system incorrectly, the faulty system can actually increase radon levels or introduce carbon monoxide into homes.

The Radon Awareness Law (HB 2772) passed in 2008 and went into effect in 2009. This law requires information on radon testing to be included on all Kansas residential real estate contracts for one or two family dwellings. The department anticipates further increases in homeowners and other occupants seeking radon measurement and mitigation services because of the Radon Awareness Law. As the demand for radon services expands due to increased public awareness, there is an even greater need to ensure safe and consistent radon measurement and mitigation practices.

The Radon Certification Law (SB531) passed in 2010 went into effect on July 1, 2011. This law requires persons who measure radon levels and perform radon mitigation services to be certified by the department, and it authorizes the department to promulgate regulations to implement the law. The proposed regulations implement the Radon Certification Law and establish: the certification program for persons performing radon testing and mitigation; and rules and regulations for the implementation and administration of the program.

## **Summary of New Regulations**

### **New regulation: K.A.R. 28-35-600. Definitions**

Regulation 28-35-600 defines specific terms used throughout the regulations in this package.

### **New regulation: K.A.R. 28-35-601. General Provisions**

Regulation 28-35-601 was written to specify general requirements applicable to all persons wishing to be certified for radon measurement, mitigation or laboratory services. The regulation establishes grounds for denying a certification, sets the term of certification at 24 months and establishes procedures for seeking relief from the regulations.

### **New regulation: K.A.R. 28-35-602. Fees**

Regulation 28-35-602 establishes the fees for initial and renewal certification as well as late fees and fees for returned checks or insufficient funds. Certification fees are non-refundable.

### **New regulations: K.A.R. 28-35-603 through 28-35-605. Certification Requirements**

Regulations 28-35-603, 28-35-604 and 28-35-605 establish the requirements for initial certification, renewal and continuing education for radon measurement technicians and radon mitigation technicians.

### **New regulations: K.A.R. 28-35-606 and 28-35-607. Radon Business Requirements**

Regulations 28-35-606 and 28-35-607 establish the requirements for radon measurement businesses and radon mitigation businesses respectively. These businesses are required to employ or retain as a consultant either a certified radon measurement or mitigation technician. Services provided by the business are required to be directly supervised by a certified person.

### **New regulations: K.A.R. 28-35-608. Reciprocity**

Regulation 28-35-608 provides for the reciprocal recognition of another state or federal certification provided the department finds the certification requirements are at least as stringent as those of the Kansas Radon Certification Law.

### **New regulations: K.A.R. 28-35-609. Renewal of certification**

Regulation 28-35-609 specifies the requirements for renewing certifications for radon measurement technicians, radon mitigation technicians and radon measurement laboratories. Certifications may be renewed for a 24-month period.

## **I. Environmental Benefit Statement**

### **1. Need for proposed amendments and environmental benefit likely to accrue.**

#### **(a) Need**

The department has two major objectives for implementing the proposed regulations. First, the proposed regulations implement the Radon Certification Law which establishes a radon proficiency certification program and empowers the department to document and track data about radon in Kansas. The certification program and its data tracking component will ensure that consumers have access to safe, consistent radon information and services from better trained technicians. Though no federal radon requirements exist, the proposed regulations will create greater consistency between Kansas and other states that currently have radon programs in place.

Second, the Radon Certification Law also establishes a fee fund for the administration of the certification program. The proposed regulations establish the fees. The department currently receives grant funds from EPA for the training of radon measurement and mitigation technicians and the collection and analysis of Kansas radon testing and mitigation data; however, EPA grant funds cannot be used in conjunction with the administration of a certification program.

#### **(b) Environmental Benefit**

The proposed regulations fall into two broad categories. The first category encompasses regulations establishing a radon certification program to ensure that radon technicians in Kansas are trained in the current best practices. The second category encompasses regulations to collect radon testing and mitigation data from technicians. Both categories of regulations serve the overall purpose of protecting home environments from known human carcinogens, promoting public health benefits associated with radon awareness, and preventing new lung cancer cases attributable to radon in Kansas.

### **2. When applicable, a summary of the research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rules and regulations or amendment.**

The proposed regulations enforce the Radon Certification Law which establishes criteria for radon proficiency certification and radon data collection in Kansas and a fee fund for the administration of the radon certification program. The regulations do not introduce enforceable limits on indoor radon because no federal law requires such enforcement. However, EPA developed an action level guideline of four picocuries/liter for indoor radon concentrations to establish the level at which it recommends radon mitigation occur. Because radon is a known class A human carcinogen and the second leading cause of lung cancer, EPA believes that any exposure to radon carries some risk and no level of radon exposure is safe. These risks associated with radon exposure have also been determined through a consensus process of state radiation control programs and suggested state regulations have been published by the Conference of Radiation Control Program Directors.

3. **If specific containments are to be controlled by the amendment, a description indicating the level at which the contaminants are considered harmful according to current available research.**

The proposed regulations do not introduce standards or limitations on radon indoor air concentrations. However, the proposed regulations do require radon measurement and mitigation technicians to take courses on best practices for radon services. Current practices utilize the EPA action level guideline of four picocuries/liter as a measure recommending further testing or mitigation, and they acknowledge that it is difficult to decrease indoor radon levels below two pCi/L.

## **II. Economic Impact Statement**

1. **Are the amendments mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program?**

An effective radon proficiency certification program is not mandated under federal law, and the department is not required by federal law to collect data about radon testing and mitigation. However, EPA, the National Environmental Health Association, and the National Radon Safety Board issue non-mandatory radon proficiency certifications with guidelines similar to those proposed in these regulations.

2. **Do the proposed amendments exceed the requirements of applicable federal law?**

Currently, federal regulations similar to the proposed regulations do not exist so the proposed regulations do not exceed the requirements of applicable federal law. The proposed fee structure is minimal and less costly to certification applicants than becoming certified through EPA, NRSB, and NEHA.

3. **Description of costs to agencies, to the general public and to persons who are affected by, or are subject to, the regulations:**

- a) **Capital and annual costs of compliance with the proposed amendments and the persons who will bear those costs.**

The proposed regulations impose no new capital costs to the implementing department, the public, or those subject to the regulations. The regulations will result in an increase of operating costs for all parties subject to the regulations pursuant to the payment and collection of fees. The department will bear the annual costs of administering, implementing, and enforcing the proposed regulations. Applicants for radon proficiency certification will bear the cost of training and continuing education courses, the cost of which likely will be passed on to consumers contracting with the certified radon technicians.

- b) **Initial and annual costs of implementing and enforcing the proposed amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other person or entities who will bear the costs.**

During the first year (SFY 2012), the radon certification program will earn an estimated \$1,900 taking into account extra staff duties and conversion of an existing online certification program for use by radon along with fees collected. Because radon certification fees will be collected on a biennial basis, the income during the second year of operation (SFY2013) is estimated to be a loss of approximately \$7,900. During the third year (SFY 2014), as more technicians are trained and certified, the program is estimated to balance out with an income of approximately \$6,000. The following table provides projections for the radon certification program fee fund.

		Program Income (Cost) SFY 2012	Program Income (Cost) SFY 2013*	Program Income (Cost) SFY 2014*
<b>Personnel (Annual @ projected SFY 2012 levels)</b>				
Salary + Fringe	5% Research Analyst (K171716) (certification and fees management)	(\$2,500)	(\$2,590)	(\$2,670)
	10% Environmental Technician (K122224) (certification and fees management)	(\$5,650)	(\$5,820)	(\$5,995)
	<b>Total annual personnel cost</b>	<b>(\$8,150)</b>	<b>(\$8,410)*</b>	<b>(\$8,665)*</b>
<b>Operations</b>				
Prof Fees/Svcs	IT services to convert existing lead/asbestos online certification program/database to radon + annual maintenance <i>ESTIMATION</i>	(\$5,000)	(\$2,500)	(\$2,500)
	<b>TOTAL PROGRAM EXPENSES</b>	<b>(\$13,150)</b>	<b>(\$10,910)</b>	<b>(\$11,165)</b>
<b>Estimated income from fees</b>				
Radon Measurement Technician (\$100/technician – biannual fee) Estimates: SFY 2012: 50 SFY 2013: 65 SFY 2014: 80		\$5,000	\$1,500	\$8,000
Radon Mitigation Technicians (\$100/technician – biannual fee) Estimates: SFY 2012: 25 SFY 2013: 40 SFY 2014: 55		\$2,500	\$1,500	\$5,500
Radon Laboratory (\$250/laboratory – biannual fee) Estimates: SFY 2012: 15 SFY 2013: 15 SFY 2014: 15		\$3,750	\$0	\$3,750
	<b>Total estimated program income from fees</b>	<b>\$11,250</b>	<b>\$3,000</b>	<b>\$17,250</b>
	<b>TOTAL PROGRAM INCOME (EXPENSE)</b>	<b>\$1,900</b>	<b>(\$7,910)</b>	<b>\$6,085</b>

\* Assume 3% annual increase in salary/fringe benefits each year

Other than fees, funding sources for the radon certification program are limited. The only other funding source for the Kansas Radon Program at large is the EPA State Indoor Radon Grant (SIRG). The department currently uses SIRG funds for partial support of the cost of training measurement and mitigation technicians and for collecting radon measurement and mitigation data in Kansas. The department will continue utilizing grant funds for these activities, and the fee fund will apply to the cost of administering the certification program because EPA grant objectives preclude EPA funds from being used for certification programs.

The department anticipates an increase in funding levels as additional measurement and mitigation technicians become certified to cover the increased demand for testing due to the 2008 Radon Awareness Law. At this time, it is difficult to predict the increase in certified technician numbers resulting from the approval of these regulations because there is no measure of how many uncertified technicians are currently meeting radon services demands.

There are no new FTE positions accounted for in this estimation. Existing program staff is slated to handle the minimal increase in workload resulting from the certification program. The department expects a minimal increase in paperwork due to the planned online application option because technicians will be able to apply for certification using one of two methods: an online application or a paper application.

**c) Costs which would likely accrue if the proposed regulations are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the regulations.**

When radon measurements are performed incorrectly, consumers do not receive accurate information about radon levels in their homes, which can delay or prevent mitigation. When mitigation systems are installed incorrectly, they can elevate radon levels and increase carbon monoxide levels in homes. Without access to consistent and skilled radon measurement and mitigation services, Kansas consumers will continue to experience increased medical costs due to health complications from radon and carbon monoxide including lung cancer, fatigue, chest pain, impaired vision and coordination, headaches, dizziness, confusion, nausea, and reduced brain function (EPA data). In some cases, the costs associated with medical care fall to the state, although it is difficult to quantify how much because there is no measure of how many lung cancers and other complications are prevented by radon mitigation.

**d) A detailed statement of the data and methodology used in estimating the costs used in the statement.**

The data and methodology of these cost estimates were obtained using the current budget estimates and EPA references, documents, and publications on SIRG. Where supportable, some general inferences were made to relate state level data from other states to the State of Kansas and KDHE. Costs regarding health care related to radon and carbon monoxide exposure are difficult to assess because there is no measure of how many cancers or other medical complications are prevented due to radon mitigation.

- e) **Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulations.**

There are no less intrusive or less costly methods that were available for consideration by KDHE to achieve the purposes of the proposed regulations.

- f) **Consultation with League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.**

The department will provide copies of this Regulatory Impact Statement and proposed regulations to each of these organizations concurrently with publication of the notice of public hearing. The department does not anticipate that the proposed regulations will have any direct fiscal impact on these three organizations.